

UNITED STATES DISTRICT COURT  
DISTRICT OF PUERTO RICO

ADVANCE EXPORT, INC., et al.,

Plaintiffs,

v.

MEDLINE INDUSTRIES, INC.,

Defendant.

Civil No. 06-1527 (JAF)

**OPINION AND ORDER**

Before the court is Plaintiffs' motion for reconsideration, filed on August 1, 2006. Docket Document No. 33. Plaintiffs urge us to revisit our July 20, 2006, Opinion and Order in which we found that Plaintiff Advance Export, Inc. ("AEI") is not a qualified dealer under the Dealer's Act of Puerto Rico, 10 L.P.R.A. § 278 (2004) ("Law 75"). Docket Document No. 30. Defendants opposed Plaintiffs' motion for reconsideration on September 11, 2006. Docket Document No. 39. For the reasons stated below, we deny Plaintiffs' motion.

**I.**

**Analysis**

Motions for reconsideration "are entertained by courts if they seek to correct manifest errors of law or fact, present newly-discovered evidence, or when there is an intervening change in the law." Lima-Rivera v. UHS of P.R., Inc., No. 04-1798, 2005 WL 2095786 at \*1 (D.P.R. Aug. 30, 2005) (citing Jorge Rivera Surillo & Co. v.

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1 Falconer Glass Indus., Inc., 37 F.3d 25, 29 (1st Cir. 1994)).  
2 Plaintiffs argue that the court incorrectly concluded that AEI is not  
3 a qualified dealer within the meaning of Law 75 because we:  
4 (1) misconstrued the definition of a dealer; (2) failed to liberally  
5 construe the requirements of the Law 75, as courts are required to do  
6 pursuant to Article 4, 10 L.P.R.A. § 278c; (3) relied on unpublished  
7 cases; and (4) misinterpreted the holding in Beatty Caribbean, Inc.  
8 v. Viskase Sales Corp., 241 F. Supp. 123, 129 (D.P.R. 2003).<sup>1</sup> Docket  
9 Document No. 33. In the alternative, Plaintiffs assert that, even if  
10 dealers must distribute goods in Puerto Rico to qualify for  
11 protection under Law 75, the court should nonetheless find that AEI  
12 is a qualified dealer since it distributes other, albeit unrelated,  
13 products in Puerto Rico. Id. Finally, Plaintiffs request that the  
14 court certify the question as to whether AEI qualifies as a dealer to  
15 the Puerto Rico Supreme Court. Id. We briefly address each of these  
16 arguments in turn.

17 **A. Definition of a Dealer**

18 Plaintiffs assert that the court erred in finding that AEI is  
19 not a qualified dealer because it does not distribute any of  
20 Defendant's products in Puerto Rico. Docket Document No. 33.  
21 According to Plaintiffs, the actual place of distribution is  
22 irrelevant so long as the dealer operates a substantial portion of

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<sup>1</sup>For a full recitation of the facts in this case, see our  
July 20, 2006, Opinion and Order. Docket Document No. 30.

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1 its distribution business in Puerto Rico. Docket Document No. 33.  
2 Plaintiffs assert that their interpretation of a qualified dealer is  
3 supported by both the legislative history of Law 75 and the First  
4 Circuit's analysis in A.M. Capen's Co. v. Am. Trade and Prod. Corp.,  
5 202 F.3d 469 (1st Cir. 2000). Id. We disagree.

6 First, Plaintiffs cite to Gemco Latinoamerica, Inc. v. Seiko  
7 Time Corp. ("Gemco"), in which the Puerto Rico Supreme Court stated  
8 that "the purpose of [Law 75] is to protect the interest of  
9 commercial distributors working in Puerto Rico." Id. (quoting Gemco,  
10 623 F. Supp. 912, 918 (D.P.R. 1985) (emphasis in original)). However,  
11 Plaintiffs' reliance on Gemco is misplaced because the plaintiff in  
12 Gemco not only operated its business out of Puerto Rico but also  
13 distributed goods in Puerto Rico. 623 F. Supp. at 914. As such,  
14 Gemco hardly stands for the proposition that a qualified dealer need  
15 not distribute goods in Puerto Rico so long as it operates its  
16 business in the Commonwealth. Moreover, the Supreme Court of Puerto  
17 Rico has clearly stated in numerous other cases that the legislative  
18 intent of Law 75 was to protect dealers that actually distribute  
19 goods in Puerto Rico. See Roberco, Inc. v. Oxford Industries, Inc.,  
20 122 D.P.R. 115, 22 P.R. Offic. Trans. 107, 112 (1988) (stating that  
21 the legislature intended to protect "local dealers . . . [that] have  
22 created a favorable market for their goods and services in Puerto  
23 Rico" (emphasis added)); Pacheco v. Nat'l W. Life Ins. Co., 22 P.R.  
24 Offic. Trans. 49, 59 (1988) ("Act No. 75 sought to regulate the

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1 termination of the relationship between principals and distributors  
2 of goods and services in the Puerto Rican market." (emphasis added)).

3       Next, Plaintiffs assert that we failed to apply the First  
4 Circuit's test for a qualified dealer as set out in A.M. Capen's Co.  
5 v. Am. Trade and Prod. Corp., 202 F.3d 469 (1st Cir. 2000). Docket  
6 Document No. 33. In A.M. Capen's Co., the plaintiff distributed  
7 products in Puerto Rico from its offices in New Jersey. 202 F.3d at  
8 471. The First Circuit found that, even though the plaintiff  
9 distributed goods in Puerto Rico, it did not qualify as a protected  
10 dealer because it did not have a substantial presence in Puerto Rico,  
11 i.e., it did not have office space, employees, a warehouse, or any  
12 other assets in Puerto Rico. Id. at 474-75. Plaintiffs assert that,  
13 because the court never discussed whether the plaintiff distributed  
14 goods in Puerto Rico, this case proves that it is "the presence of  
15 the distributor's operations within Puerto Rico's borders, and not  
16 its sales in Puerto Rico" that determines whether a distributor is a  
17 qualified dealer under Law 75. Docket Document No. 33. However,  
18 this inference is unfounded. The fact that the court did not  
19 explicitly state that the distribution of goods in Puerto Rico was a  
20 requirement of a qualified dealer, does not mean that this  
21 requirement does not exist. The court may have found it unnecessary  
22 to discuss the issue since it was not a contested issue. See A.M.  
23 Capen's Co., 202 F.3d at 471 (stating that it was undisputed that  
24 plaintiff distributed goods in Puerto Rico).

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1           Moreover, Plaintiffs have not pointed to a single case in which  
2           a distributor was found to be a qualified dealer under Law 75, even  
3           though it did not distribute goods in Puerto Rico. Docket Document  
4           No. 33. Accordingly, we affirm our finding that AEI is not a  
5           qualified dealer under Law 75 because it does not distribute goods in  
6           Puerto Rico.

7           **B. Law 75's Rule of Statutory Construction**

8           Plaintiffs assert that the court "failed to consider and apply  
9           the specific rule of statutory construction for interpreting Law 75"  
10          which states that the provisions of Law 75 ought to be "liberally  
11          construed." Docket Document No. 33 (citing 10 L.P.R.A. § 278c  
12          (2004) ("Article 4 of Law 75")). Article 4 states, in relevant part:

13                   This chapter being of a remedial character,  
14                   should, for the most effective protection of  
15                   such rights, be liberally interpreted; in the  
16                   adjudgment of the claims that may arise  
17                   hereunder, the courts of justice shall recognize  
18                   the rights in favor of whom may, effectively,  
19                   have at his charge the distribution of  
20                   activities, notwithstanding the corporate or  
21                   contractual structures or mechanisms that the  
22                   principal or grantor may have created or imposed  
23                   to conceal the real nature of the relationship  
24                   established.

25          10 L.P.R.A. § 278c. We understand this provision to mean that courts  
26          should carefully scrutinize the relationship between a principal and  
27          its alleged distributor to ensure that the principal does not  
28          purposely conceal aspects of the business relationship so as to avoid  
29          liability under Law 75. Cf. R.W. Int'l Corp. v. Welch Food, 13 F.3d

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1 478, 482-83, 486 (1st Cir. 1994) (liberally construing the definition  
2 of a supplier-dealer relationship to apply to the parties' business  
3 arrangement despite defendant's assertion that Law 75 should not  
4 apply; defendant had argued that the parties were allegedly in a  
5 trial phase during which negotiations were still ongoing).

6 We fail to see how Article 4 is relevant to the issue at hand.  
7 This not a situation in which the defendant is purposely hiding some  
8 aspect of the relationship so as to avoid liability under Law 75.  
9 The issue here is whether Law 75 applies to principal-dealer  
10 relationships in which the alleged dealer operates out of Puerto Rico  
11 but does not distribute goods in Puerto Rico. As stated in our  
12 July 20, 2006, Order, based on the text of Law 75 and the Puerto Rico  
13 Supreme Court's interpretation of the statute, it is clear that a  
14 qualified dealer is one that distributes goods in Puerto Rico, and  
15 there is no way to liberally construe the statutory language to find  
16 otherwise. Docket Document No. 30. Accordingly, we find that  
17 Plaintiffs' argument regarding statutory construction fails.

18 **C. Use of Unpublished Cases**

19 According to Plaintiffs, we should not have relied on Dynamic  
20 Merchandising, Inc. v. The Pillsbury Co., No. DDP2004-0259, 2005 WL  
21 1105123 (T.C.A. Apr. 20, 2005), a case from an appellate court in  
22 Puerto Rico. Docket Document No. 33. They argue that "it is an  
23 error of law to base a decision on an unpublished judgment issued by  
24 the Puerto Rico Court of Appeals." Id. However, contrary to

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1 Plaintiffs' contention, we did not cite Dynamic Merchandising, Inc.  
2 as controlling precedent. Rather, we used the case as persuasive  
3 authority, which Plaintiffs concede is appropriate. Id. (citing 4  
4 L.P.R.A. § 24x (2004)); Rivera Maldonado v. E.L.A., 119 D.P.R. 74, 80  
5 (1983).

6 **D. Our Interpretation of Beatty Caribbean, Inc. v. Viskase**  
7 **Sales Corp.**

8 \_\_\_\_\_Plaintiffs assert that we misapprehended the holding in Beatty  
9 Caribbean Inc. v. Viskase Sales Corp., 241 F. Supp. 123 (D.P.R.  
10 2003). However, this argument is wholly unpersuasive. Plaintiffs  
11 fail to explain how we committed an error of law and, instead, merely  
12 rehash the arguments they presented in their Opposition to  
13 Defendant's Motion to Dismiss. See Docket Document Nos. 21, 33.

14 **E. Plaintiffs' Distribution of Unrelated Products in Puerto**  
15 **Rico**

16 Plaintiffs assert that, even if the court is correct in finding  
17 that AEI is not a qualified dealer because it does not distribute  
18 Defendant's products in Puerto Rico, the court should nonetheless  
19 find that AEI is protected by Law 75 because it distributes other  
20 products in Puerto Rico that are unrelated to this lawsuit. Docket  
21 Document No. 33. We fail to see how this is possible.

22 Law 75 is a protective statute that permits the supplier in a  
23 distribution contract to terminate a dealership contract only for  
24 "just cause." 10 L.P.R.A. § 278a. It would not make sense to  
25 subject suppliers to liability under Law 75 and require them to prove

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1 that they terminated their relationship with a local dealer for "just  
2 cause" unless the local dealer was in the business of distributing  
3 goods belonging to that particular supplier.

4 Accordingly, Plaintiffs' argument fails. Plaintiffs cannot  
5 bring a lawsuit under Law 75 against Defendant Medline Industries,  
6 Inc. based on the fact that they distribute non-Medline products in  
7 Puerto Rico.

8 **F. Certification to the Puerto Rico Supreme Court**

9 Plaintiffs assert that we should submit the issue of whether AEI  
10 is a qualified dealer under Law 75 to the Puerto Rico Supreme Court  
11 because this is a difficult and unsettled question of state law.  
12 Docket Document No. 33. We decline to do so. As we stated in our  
13 July 20, 2006, Order, the Puerto Rico Supreme Court may not have  
14 addressed this issue directly, but it has repeatedly stated in dicta  
15 that a qualified dealer is one that distributes goods in Puerto Rico.  
16 Docket Document No. 30; see also Acosta-Mestre v. Hilton Int'l, 156  
17 F.3d 49, 54 (1st Cir. 1998) (declining to resort to the certification  
18 process because "[w]hile there [was] no black-letter precedent in  
19 Puerto Rico . . . [the court found] relatively clear the course that  
20 the courts of that jurisdiction would take"). Secondly, "parties who  
21 choose to litigate state law questions in federal court under  
22 diversity jurisdiction are presumptively disallowed a second bite at  
23 the apple via the certification process." Basic Controlex Corp. v.  
24 Klockner Moeller Corp., 202 F.3d 450, 453 n.2 (1st Cir. 2000).



